IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4969 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE N.G.NANDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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PURSHOTTAMDAS C PARMAR

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 4969 of 1989

MR PJ VYAS for Petitioner.

Mr.L.R.Pujari, Asst.GOVERNMENT PLEADER for Respondent

CORAM : MR.JUSTICE N.G.NANDI

Date of decision: 27/07/2001

C.A.V.JUDGEMENT

In this writ petition, the petitioner prays for writ of certiorari and mandamus praying for quaqshing and setting aside the order whereby the petitioner has been refused deemed date and promotion to the post of Deputy Collector and the deemed date.

2. The say of the petitioner is that the petitioner while working in the Revenue Department of the respondent passed Revenue Qualifying Examination("RQE" for short)in April, 1965; that the persons junior to him including

Shri T.G.Parmar also passed the said examination in 1971; that the petitioner vide application, dated 20.9.1979 submitted that the petitioner passed the RQE in April, 1965 and pointed out that according to the circular of the Government issued in 1976 Mochi caste is to be treated for the purpose of fixation of seniority and promotion in roster system, and that petitioner's name be included in the list of Scheduled Caste so that he may avail of the benefit of roster system; that the petitioner though senior to Shri T.G.Parmar in the seniority list maintained at the District level, Shri T.G.Parmar was promoted as Mamalatdar in 1980; that the respondent issued circular dated 29.7.1986 pertaining giving promotions pursuant to roster system to Government employees (Mochi Caste), and that by the said circular it is provided that the promotion according to roster system should be given to Government employees belonging to Mochi Caste with effect from 27.7.1977 and promotions given during the period dt: 27.7.1977 to dt: 20.11.1979 be re-examined; that the circular further provides that the persons promoted need not be reverted but they should be fixed at the roster point and even according to this circular the respondent has not considered the petitioner's application and the grievance putforth by the petitioner has not been considered. The petitioner, therefore, prayed for the reliefs aforestated, more particularly, in para 16(A) and 16(B) of the petition.

3. The respondent has filed the affidavit-in-reply and refuted the claim of the petitioner, interalia, contending that the circular dated 21.11.1979 contain instructions to give benefit to the Mochi community Government servants in promotion. The instructions are that the list which is prepared for promotion at present and from this list, if promotion is remained to be given, the list should be reviewed and the Government servants from Mochi Community should be given benefit in promotion according to the Scheduled Caste Roster point, in accordance with the instructions, from time to time; Shri That ShriT.G.Parmar is a Scheduled Caste Deputy Mamalatdar and he was considered for promotion in the cadre of Mamalatdar in January, 1977 against the roster point. He was taken up in the select list but there was departmental enquiry against him and hence he was not promoted as Mamalatdar at that time. In October, 1977 charges against Shri T.G.Parmar were withdrawn by the Collector, but at that time there were many reversions from Mamalatdar to Deputy Mamalatdar and hence the case of T.G.Parmar for promotion was not considered. Had there been no departmental enquiry against Shri

T.G.Parmar then Shri Parmar would have been promoted as Mamalatdar in February, 1977 and in that event he would have been required to be reverted as Deputy Mamalatdar. Thereafter, Shri T.G.Parmar was promoted in November, 1980; that the case of the petitioner who belongs to Mochi Community was not considered along with Shri T.G.Parmar because the instructions to give benefit in the promotion to Mochi Community is issued in November, 1979, the Government in General Administration Department has issued further instructions vide its Circular No.1784-139-V.A-G.5 dated 29.7.1986 to give benefit of Roster in promotion to the Mochi Community providing that the select lists which were prepared between 27.7.1977 to 20.11.1979 were to be reviewed in light of instructions issued vide circular dated 29.7.1986 and after the end of the review of the select list/promotions, the officers/Government servants of Mochi Community who have taken benefit of the Roster in promotion are eligible to take benefit of notional seniority but the pay and allowance will be given from the date of issue of the circular, dated 29.7.86; that the petitioner was promoted on 17.6.82 against the roster point; that according to instructions contained in Circular, dated 29.7.86 the benefit of roster was to be given from 27.7.1977 and the select list which was prepared between 27.7.1977 to 20.11.1979 was to be reviewed; that the petitioner was never considered for promotion between 27.7.77 to 20.11.1979 and was considered for the first time for promotion as Mamalatdar in July, 1981 and, therefore, not entitled to get benefit of circular dated 29.7.86.

4. I have heard the submissions advanced by Mr.P.J.Vyas, learned advocate for the petitioner and Mr.L.R.Pujari, Ld.AGP for the respondent-State.

5. There is no dispute that vide circular, dated 21.11.1979 the instructions are to the effect that benefit to Mochi Community Government servants in promotion in the Roster system be given. Annexure "A" is the circular, dated 29.7.1986 for giving benefit of roster point in promotion to the Government employees of Mochi community. It is provided therein that the Government servants/employees should be given benefit in promotion on roster system from 27.7.1977 and ,therefore, the select list prepared for promotion between dt. 27.7.1977 to dt. 20.11.1979 be reviewed and after the end of the review of the select lists/promotions, the officers/Government servants of Mochi community who have taken benefit of the roster in promotion are eligible to

take benefit of notional seniority but the pay and allowances will be given from the date of issue of the circular dated 29.7.1986.

6. According to the respondent, Shri T.G.Parmar, a Scheduled Caste Deputy Mamalatdar was considered for promotion in the cadre of Mamalatdar in January, 1977 against the roster point, and was taken up in the select list but because of pending departmental inquiry against him he could not be given promotion to the post of Mamalatdar at that time. That the charges against Shri T.G.Parmar were withdrawn in October, 1977, but at that point of time there were reversions from the post of Mamalatdar to Deputy Mamalatdar, and some of the Deputy Mamaltdars promoted on ad-hoc basis to the post of Mamalatdar on the basis of select list of January, 1977 were required to be reverted to the post of Deputy Mamalatdar for want of vacancies and that Shri T.G.Parmar on the basis of select list of January, 1977 was promtoed to the post of Mamalatdar in November, 1980.

7. Admittedly, the petitioner was not included in the select list which was prepared in 1977. The instructions vide circular, dated 21.11.1979 are to the effect that the benefit of promotion to the employees of Mochi Community would be from 21.11.1979. Circular, dated 29.7.86 clearly provides that the Mochi Community employees be given benefit of promotion in roster system from 27.7.1977. The said circular also provides that the select list which were prepared between 27.7.1977 to 20.11.1979 be reviewed, and at the end of review select list/promotions the officers/Government servants of Mochi community who have taken benefit of roster system in promotion are eligible to take benefit of notional seniority but the pay and allowances will be given from the date of issue of circular dated 29.7.1986.

8. According to the respondent, the petitioner is undisputedly senior to Shri T.G.Parmar in the post of Deputy Mamalatdar; the petitioner passed RQE in the year 1965 whereas Shri T.G.Parmar passed RQE in the year 1971; the petitioner belongs to Mochi Community whereas Shri T.G.Parmar belongs to Scheduled Caste.

9. The select list was prepared in January, 1977. According to respondent, the petitioner was considered for promotion as Mamalatdar, for the first time, in July,

1981 looking to his Confidential Reports for the years 1978 to 1980. The Confidential Reports of these years are stated to be not positive, but since the adverse remarks of two years in the Confidential Report were not communicated to the petitioner, due to this technical reason, the G.P.S.C.has agreed to bring the petitioner in the select list of July, 1981, i.e. for the promotion of Mamalatdar. Admittedly, the averse remarks in the Confidential Reports of the petitioner for the years 1978-80 were not communicated to the petitioner. There is nothing on record to suggest that even for the years prior to 1977, i.e. for 1974-75, 1975-76 and 1976-77 the Confidential Reports of the petitioner contained any adverse remarks. According to the circular dated 19.7.1986 the select lists prepared between 27.7.1977 to 20.11.1979 were required to be reviewed and after the end of the review of the select lists/promotions, the officers/Govt.servants of Mochi Community who have taken benefit of the Roster in promotion are eligible to take benefit of notional seniority but the pay and allowances will be given from the date of issue of the circular dated 29.7.86. The review select/seniority list as per the instructions contained in circular, dated 29.7.86-Annexure "A" has not been placed on record. The respondent could have also placed on record the adverse remarks in the Confidential Reports of the petitioner so as to suggest justification for considering the petitioner in 1981 for promotion. In affidavit-in-rejoinder, the specific contention of the petitioner is that the revised/reviewed seniority list pursuant to the instructions contained in the circular-annexure "A" was not circulated among the employees and, in fact, the Government has not revised/reviewed the seniority list in accordance with the circular-Annexure"A". It was necessary for the respondent to produce the revised/reviewed seniority list, if prepared, in light of circular-Annexure"A" which confers benefit on the employees of Mochi Community from 1977. It is pertinent to note that in annexure "C", i.e. application, dated 18.6.1983, the petitioner has specifically named seven persons giving the year of their passing RQE and has stated that he is senior to these seven persons in length of service, passing of RQE etc., and all these seven persons were promoted superceding the petitioner. Be it as it may, according to the circular, dated 29.7.1986(annexure "A"), the petitioner ought to have been given benefit of promotion in roster point as the select lists prepared between 27.7.1977 to 20.11.1979 were to be revised/reviewed. The object of reviewing/revising the select list prepared between 27.7.1977 to 20.11.1979 would be to include the employees

of Mochi Community who are eligible to get the benefit of roster point and who were not included in the select list prepared earlier and such employees would be entitled to notional seniority. The plain reading of circular-Annexure"A" clearly suggests that in absence of any adverse remarks in the Confidential Reports and communication of the same the employees of Mochi Community eligible for the benefit of roster system in promotion ought to be included in revised/reviewed select list and they would be entitled to notional seniority whereas the pay and allowances would be payable with effect from 29.7.86, i.e. the date of circular-Annexure "A".

10. Annexure "A" leaves no room for doubt that the petitioner, for the reasons best known to the respondent, was deprived of the benefit of roster point in promotion to the post of Mamalatdar, though the petitioner was eligible for the same as the consequences of annexure"A". The petitioner has retired from service with effect from 31.10.1986 presumably on attaining the age of superranuation

11. In the affidavit-in-reply, it is not the say of the respondent that the revised/reviewed seniority list prepared in light of circular dated 29.7.86 annexure "A" was circulated. The say of the petitioner is that such revised/reviewed seniority list was never prepared much less circulated. It need hardly be said that the revised/reviewed seniority list prepared in light of circular dated 29.7.86 (Annexure"A") ought to be circulated so that the persons aggrieved with the same in any manner, may file their objections, if any, to the same. Since that is not done, the respondent is required to be directed to consider the case of the petitioner for grant of deemed date, i.e. the day on which Shri T.G.Parmar was promoted to the post of Mamalatdar.

12. In the result, the respondent is directed to consider the case of the petitioner for grant of deemed date, i.e. the day on which Shri T.G.Parmar who was junior to the petitioner was promoted to the post of Mamalatdar within three months from the date of the receipt of writ of this order or from the date of receipt of certified copy of this judgment, whichever is earlier.

13. With the above directions, this petition is disposed of. Rule is accordingly made absolute. No

order as to costs.

27.7.2001 (N.G.NANDI,J)